

I hereby certify that this correspondence is being filed via EFS-Web with the United States Patent and Trademark Office on July 14, 2008.

PATENT  
Attorney Docket No.: 026549-000100US  
Client Ref. No.: 30836

TOWNSEND and TOWNSEND and CREW LLP

By: \_\_\_\_\_

Dana Kane

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Ronit Eisenberg  
Raz Tamar

Application No.: 10/009,809

Filed: April 26, 2002

For: CELL PENETRATING ANTI-  
ALLERGIC PEPTIDES

Customer No.: 20350

Confirmation No. 1519

Examiner: Crowder, Chun

Technology Center/Art Unit: 1644

RESPONSE TO NOTIFICATION OF  
NON-COMPLIANT APPEAL BRIEF

Mail Stop BPAI  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Notification of Non-Complaint Appeal Brief mailed June 26, 2008 the above-referenced application, and in accordance with the telephone conversation of July 14, 2008 with Patent Appeal Center Specialist Darlene Brown, applicants submit herewith a corrected copy of page 6 of the Substitute Appeal Brief filed electronically on June 12, 2008.

The substitute page 6 corrects the typographical error in the first paragraph, in the first line of text below the title, wherein the pending claims were stated to be 63, 66-7[9] and 72-79 instead of the intended 63, 66-70 and 72-79.

Ronit Eisenberg et al.  
Response to Notification of  
Non-Complaint Appeal Brief dated June 26, 2008  
Response dated July 14, 2008  
Page 2 of 2

Applicants and the undersigned affirm that this first instance of the numeral 79 appeared inadvertently and without deceptive intent, and apologize for the inconvenience to Ms. Brown and the Office. It is requested that the substitute page 6 be considered a part of the Substitute Appeal Brief filed June 12, 2008.

Respectfully submitted,



Kenneth A. Weber  
Reg. No. 31,677

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 415-576-0200  
Fax: 415-576-0300  
Attachments  
KAW:dk  
61430182 v1

## **6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

A. The Examiner rejects the pending claims 63, 66-70 and 72-79 as obvious (35 U.S.C. §103) over Holgate *et al.* (British Med. Bull. 1992, 481:40-50) in view of Aridor, (Science, 1993, 262:1569-1572) and Lin (U.S. Pat. No. 5,807,746). Holgate is relied upon as generally teaching that pharmacological agents can inhibit mast cell degranulation and these agents are useful for treating diseases such as asthma. Aridor teaches Seq. No. 1 (KNNLKECGLY) and Seq. No. 2 (KENLKDCGLF). Lin teaches, Seq. ID No. 3, the Kaposi Fibroblast Growth Factor CPP (AAVALLPAVLLALLAP).

Dependent claims 64 and 65 reciting specific modifications are rejected as obvious over Holgate in view of Aridor and Lin in view of Avruch and Jackson. Avruch and Jackson recite modifications analogous to the those of dependent claims 64 and 65.

The Examiner presents the *prima facie* case of obviousness by arguing that she has identified the salient elements of the claims, a motivation to combine the elements, and a reasonable expectation that once combined, the recited elements would function to inhibit histamine release by mast cells. Appellants request that claims 64 and 65 be considered jointly with the independent claims.

B. There is a provisional double patenting rejection under 35 U.S.C. §101. The Examiner provisionally rejected the pending claims 63, 66-79 and 72-79 over co-pending applications 10/465,826 (now U.S. Pat. No. 7,112,568), and 11/214,588. This rejection is not presented for appeal and will be addressed in an appropriate manner presuming that the single rejection under §103 is reversed.

## **7. ARGUMENT**

Appellants submit that the *prima facie* case of obviousness is not properly set forth. The Examiner's presumption that the art is sufficiently predictable to provide one of skill with a reasonable expectation of success is wrong. In contrast to the Examiner's unsupported position, experimental evidence clearly indicates that most fusions of CPP with mast cell inhibitors do not inhibit mast cell degranulation. Alternatively, appellants seek to traverse the *prima facie* case of